IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, 7TH JUNE 2007/ 17TH JYAISHTA 1929

Crl.Rev.Pet.No. 3093 of 2003(C)

CRA.23/2003 of THE ADDL.SESSIONS JUDGE(ADHOC-II)ERNAKULAM
CC.720/1996 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

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REVN. PETITIONER: APPELLANTS/ACCUSED 1 AND 2

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1. K.M.SHAIK ABDULLA S/O. KANJI HASAN,
PROPRIETOR, M/S. LONDON ATTAR STORES, THALASSERY

2. N.DEVARAJAN, LIC AGENT, CODE 2320774,
S/O. N.NANU, PULIYULLATHIL HOUSE, KURICHIKARA P.O.
CHEMADU, TELLICHERRY.

BY ADV. SRI.T.A.SHAJI
SRI.G.JANARDHANA KURUP (SR.)

RESPONDENTS: RESPONDENT/COMPLAINANT

STATE OF KERALA, (SUPERINTENDENT OF
POLICE, CBI, SPE, THIRUVANANTHAPURAM) REPRESENTED
BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM

BY ADV. SRI.S.SREEKUMAR, SC FOR CBI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 01/06/2007, THE COURT ON 7-6-2007 PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

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CRL.R.P.NOS.3093 OF 2003
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DATED THIS THE 7TH DAY OF JUNE 2007

ORDER

The revision petitioners who are the accused in C.C.No. 720/96 in the file of the Chief Judicial Magistrate, Ernakulam stand convicted for the offences under Sections 120B, 420, 471 I.P.C and sentenced to undergo simple imprisonment for two years each for the offence under Section 420 IPC, simple imprisonment for six months each for the offence under Section 471 IPC and simple imprisonment for six months each for the offence under Section 120B IPC. It is also directed that the sentences shall run consecutively. The appellate court confirmed the conviction and sentence.

2. The prosecution case is that A1, elder brother of deceased Ahamed Bava entered into a criminal conspiracy with the 2nd accused who is an L.I.C.agent and by forging the proposal form etc. obtained an L.I.C.policy from the Thalassery branch of the L.I.C.in the name of the deceased Ahamed Bava who was sick

and ailing suppressing the health conditions and the actual age of Ahamed Bava and attempted to obtain the L.I.C amount by preferring a death claim. It is the case that the signatures in the proposal form etc.were forged and the name of A1 was mentioned as nominee and on death of Ahamed Bava the claim was preferred.

3. The evidence adduced at the instance of the prosecution consisted of the testimony of Pws.1 to 16 and Exts.P1 to P28. When questioned under Section 313 Cr.P.C., the incriminating portions of prosecution evidence were put to them, both of them had denied the prosecution allegations and reiterated their innocence. It is the contention of the revision petitioners that the evidence adduced at the instance of the prosecution is too vague and scratchy and the reasoning of the courts below is perverse. The revision petitioners have been convicted on the basis of probability which is contrary to the basic tenets of criminal jurisprudence. It is further stressed that the alleged forgery stands not established as the signature has not been subjected to scientific examination of the handwriting expert. It is further pointed out that A1 is made the nominee in the policy is

not of much significance as the nominee is not having any legal right to appropriate the amount due towards the policy and that he can only collect the same. It is further pointed out that the reliance placed on the evidence of PW6 is totally unwarranted as he is an aged person and undergone,admittedly, cataract surgery. The evidence of the Doctor who allegedly treated the deceased is only oral evidence and the same ought not to have been relied to enter upon a conviction. It is also pointed out that no attempt has been made out by the investigating agency to ascertain the actual age of the deceased Ahamed Bava.

4. On a perusal of the evidence adduced in the matter, I find that the findings arrived at by the courts below as to the guilt of the accused do not call for any interference. The admitted signatures of deceased Ahamed Bava as contained in the earlier policy taken by him in the year 1980 vide Ext.P3 file and the signatures of the deceased in Ext.P8 the current account opening form of the Vijaya Bank, Ext.P8(a), the partner's liability letter issued to the Bank and Ext.P9, the current account opening form at South Indian bank and in Ext.P4, the dissolution of partnership deed dated 30-4-1992 and Ext.P20 partnership

deed dated 11-3-1980 are totally dissimilar with the signatures of the deceased contained in Ext.P2 file, in Ext.P2(a),the proposal form, allegedly issued by the deceased at the time when the impugned policy was taken in November 1991. Just a look at the two sets of signatures would show that the same are entirely at variance. The signatures contained in Ext.P3 file and in the account opening form etc. are in Kannada and it appears that the full name is written as the signature. The signatures in the impugned Ext.P2 (a) proposal form and Ext.P2 letter are just two letters put together as if M and B. Of course, whether the signatures in Exts.P2 and P2(a) are affixed by which of the accused is not much relevant in the circumstances in view of the rest of the evidence in this regard that it is the accused alone who could have executed the scheme in this regard. As pointed out by the courts below, in Ext.P3 policy of 1980, the nominee is the wife of the deceased. The deceased was the younger brother of A1 and his age at the time of Ext.P3 proposal is mentioned as 38 whereas in Ext.P2(a) proposal form the age is mentioned as 40. Ext.P2 (a) proposal is more than 10 years after the earlier policy. It is also seen from Ext.P20 that age of

A1 is mentioned as 42 and in Ext.P2(a) proposal the age of deceased Ahamed Bava is mentioned as 40. The date of Ext.P20 is dated 11-3-1980. The address of the deceased is mentioned as residing at Hakkidagolli in Karnataka. It is also pertinent to note that as deposed by PW1 the Divisional Manager of the L.I.C., the medical examination is mandatory with respect to the policies for amounts above Rs.50,000/- Ext.P2(a) the impugned policy is for Rs.50,000/-. Ext.P3 policy is for Rs.50,000/- and yet there is clear evidence as to the proposer being taken for medical examination etc. The evidence of the officials who examined and investigated the matter i.e.PWs.3,4 and 12 and that of PW7, the Doctor at Hakkidagoli who treated the deceased and issued Ext.P10 certificate is specific as to the fact that the deceased was ailing for more than a decade on account of bronchatic asthma. Of course, no prior treatment records as such could be produced. But I find that the version of PW7 stands not discredited. Ext.P2(d) letter authorising A2 to collect the policy is in the letter head of London Athar stores, Thalassery of which the Managing Partner is A1. It is also to be noted that the previous signatures of Ahamed Bava have been

proved from the Bank records produced as well as from the evidence of PW6 the person who was working in the London Athar Stores for more than 25 years and who is quite familiar with the deceased and A1. The fact that he being undergone cataract surgery is no reason to disbelieve his version. PW5, the Secretary of Hidayathul Islam Sangam, Neerveli, Kannur who issued Ext.P2(b) certificate mentioning that Ahamed Bava was a student of the Madrassa run by the institution and that his date of birth is 25-9-1951. He has issued the certificate without having any documents to support the same. Of course, PW5 was declared hostile. He is familiar with the first accused as well. I find that the evidence adduced in the matter is actually counterveiling and clinching as the circumstances of the case which would only indicate that A1 was the person who manipulates the entire events. I find no reason to deviate from the findings of the courts below as to the guilt of A1. As no amount has been paid by the LIC in pursuance of the death claim by A1, I find that only the offence under Section 511 of 420 I.P.C. is attracted and not the offence under Section 420 IPC. Hence, the conviction is altered to one under Section 511 of

Section 420 I.P.C.

4. So far as the involvement of A2 is concerned, it appears that he is entitled to benefit of doubt as there is nothing to show that he would be gaining any benefit in the transaction. It is also possible that in his eagerness to have a Policy canvassed, he might have been led unawares by A1. Hence, I find that he is liable to be acquitted.

5. So far as the sentence is concerned, the counsel for the revision petitioner has pleaded for leniency. it is pointed out that A1 is right now quite aged and past 70. It is also pointed out that more than a decade is over since the commencement of the proceedings and that so far the accused were living under the shadow of incarceration and facing the criminal proceedings. I find that pendency of the matter for so long is a matter that has to be considered while modulating the sentence. In the circumstances, at this belated stage and in view of the fact that the accused would have undergone considerable psychological strain, imprisonment is not required. Hence, the sentence is modified as follows:

A1 is sentenced to undergo imprisonment till the rising of the court and to pay a fine of Rs.1,00,000/- and in default to undergo simple imprisonment for six months. No separate sentence is awarded for the rest of the offences. The first revision petitioner is granted three months time from today onwards to remit the fine amount. He shall appear before the Chief Judicial Magistrate, Ernakulam on 24-8-2007 to receive sentence. The second revision petitioner/A2 is acquitted. The Crl. Revision petition is disposed of accordingly.

Sd/-

K.R.UDAYABHANU, JUDGE

ks.

ORDER ON CRL.M.A.NO. 12547/2003 IN CRL.R.P.NO. 3093/2003

DISMISSED.

7-6-2007 SD/-K.R.UDAYABHANU, JUDGE

TRUE COPY

P.S.TO JUDGE

K.R.UDAYABHANU, J

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CRL.R.P.NOS.3093 &
3094/2003 & 104/2004

ORDER

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24-05-2007

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